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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|-----------------------|------------------|
| 10/617,429 | 07/10/2003 | Joe Dvoracek | Dvorac.J-8 | 3230 |
| 22197 | 7590 | 01/14/2004 | EXAMINER | |
| GENE SCOTT; PATENT LAW & VENTURE GROUP 3140 RED HILL AVENUE SUITE 150 COSTA MESA, CA 92626-3440 | | | PECHHOLD, ALEXANDRA K | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3671 | |

DATE MAILED: 01/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | |
|------------------------------|------------------------|---------------------|
| Office Action Summary | Application No. | Applicant(s) |
| | 10/617,429 | DVORACEK, JOE |
| | Examiner | Art Unit |
| | Alexandra K Pechhold | 3671 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 10 July 2003.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) _____ is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-11 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
 a) The translation of the foreign language provisional application has been received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) 1.
- 4) Interview Summary (PTO-413) Paper No(s) _____.
 5) Notice of Informal Patent Application (PTO-152)
 6) Other: _____.

DETAILED ACTION

Specification

1. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. **Claims 1-3, 5, 8, and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Brown (D406,543).**

Regarding claim 1, Brown discloses an apparatus comprising: an upright stand terminating at an upper end thereof, with an integral frame defining an aperture; the frame and the upper end of the upright stand joined at a crotch; and, a tie-on terminal extending from the crotch, upwardly into the aperture, all illustrated in Figs. 1 and 2.

Regarding claim 2, Brown illustrates the upright stand as generally cylindrical in Figs. 1 and 2, since each section is a cylinder

Regarding claim 3, Brown illustrates the upright stand as generally cone shaped since the bottom section is widest and narrows as you go upward.

Regarding claim 5, Brown illustrates in Fig. 1 the upright stand comprising plural contiguous, coaxial, sections including a base section, a center section joined to the base section at an inwardly directed annular step, and an upper section joined to the center section at an outwardly directed annular step, when viewing any three sections in the channelizer of Brown.

Regarding claim 8, Brown illustrates the tie-on terminal is in the form of a shaft, seen as the bottom, relatively horizontal port of the U-shaped frame, with outwardly extending pimples adjacent an end of the shaft, seen as the somewhat pointed end sections at the base of the "U" in Fig. 2.

Regarding claim 9, Brown illustrates a terminal end of the shaft providing a bolt hole therein, seen as the round hole in Figs. 1 and 2.

4. Claims 10 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Brown (6,182,600).

Regarding claim 10, Brown discloses apparatus comprising in combination: a plurality of spaced apart delimiters as shown in the figures, each of the delimiters providing at an upper end thereof, an integral frame defining an aperture, seen as handle (38) with an aperture therein; the frame and the upper end joined at a crotch as the figures show; and, a tie-on terminal extending from the crotch, upwardly into the aperture, best shown in Fig. 5; and a flexible elongate member wrapped about the tie-on terminal of each of the delimiters in turn to defining a boundary, disclosed in column 5, lines 13-16.

Regarding claim 11, Brown discloses caution tap in column 5, lines 13-16.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. **Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brown (D406,543) as applied to claim 1 above, and further in view of Bent et al (D412,131).** Brown fails to disclose the stand as generally rectangular and upwardly tapered. Bent teaches an ornamental design for a traffic channelizing system as shown in the figures. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the shape of the traffic channelizer of Brown to be rectangular as taught by Bent, since both are shapes ideal for traffic channelizers and provide a different ornamental look to the channelizer.

7. **Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brown (D406,543) as applied to claim 3 above, and further in view of Kulp et al (US 5,560,732).** Brown fails to disclose the stand comprising two contiguous, coaxial sections including a central section, and joined to the central section at an outwardly directed annular step, an upper section. Kulp teaches this embodiment, shown in Figs. 1 and 2, with the outwardly directed annular step near the top of the channelizer. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the apparatus of Brown to have the configuration of having two

contiguous, coaxial sections including a central section, and joined to the central section at an outwardly directed annular step, an upper section, as taught by Kulp, since such a modification alters the ornamental design of the delimiter without straying from the desired purpose and function of the apparatus.

8. **Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brown (D406,543) as applied to claim 1 above, and further in view of Kulp et al (US 5,749,673).** Brown fails to disclose the tie on terminal in the form of a mushroom. Kulp teaches a safety delineator having a tie on in the form of a mushroom, seen as knob portion (30). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the tie on terminal of Brown to be in the form of a mushroom as taught by Kulp, since mushroom-shaped knobs like in Kulp are well known shapes for tie on terminals.

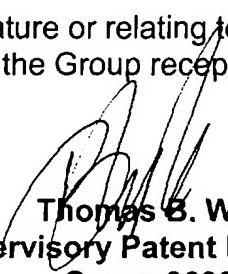
Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alexandra Pechhold whose telephone number is (703) 305-0870. The examiner can normally be reached on Mon-Thurs. from 8:00am to 5:30pm and alternating Fridays from 8:00am to 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will, can be reached on (703)308-3870. The fax phone number for this Group is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1113.


Thomas B. Will
Supervisory Patent Examiner
Group 3600

AKP
12/30/03